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15 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

16 ASETEK DANMARK A/S,  
17 Plaintiff and  
18 Counterdefendant,  
19 ASETEK USA, INC.,  
20 Counterdefendant,  
21 v.

22 COOLIT SYSTEMS, INC.,  
23 Defendant and  
24 Counterclaimant,  
25 COOLIT SYSTEMS USA INC., COOLIT  
26 SYSTEMS ASIA PACIFIC LIMITED,  
27 COOLIT SYSTEMS (SHENZHEN) CO.,  
28 LTD.,  
Defendants,  
CORSAIR GAMING, INC. and CORSAIR  
MEMORY, INC.,  
Defendants.

CASE NO. 3:19-cv-00410-EMC

**ASETEK DANMARK A/S'S REPLY IN  
SUPPORT OF ITS MOTION TO EXCLUDE  
CERTAIN OPINIONS OF DR. JOHN P.  
ABRAHAM UNDER DAUBERT FOR  
MISCONSTRUING AND MISAPPLYING  
THE PARTIES' STIPULATED CLAIM  
CONSTRUCTION**

Date: May 5, 2022  
Time: 1:30 PM  
Location: Courtroom 5, 17<sup>th</sup> Floor  
Judge: Hon. Edward M. Chen

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1      **I.      Introduction**

2      Dr. Abraham's noninfringement opinion improperly delves too far into claim construction  
 3 territory. He relies extensively on various extrinsic evidence to import or add limitations to the  
 4 parties' stipulations about the construction of "reservoir." Dkt. 400-5, ¶¶53-55 and 85-89. This is  
 5 improper and should be excluded under precedent from this district and *Daubert*.

6      **II.     Dr. Abraham's Noninfringement Arguments are Based on Improper Claim  
 7 Construction Arguments**

8      As Judge Orrick noted in *Fujifilm Corp. v. Motorola Mobility LLC*, No. 12-CV-03587-  
 9 WHO, 2015 WL 1265009 (N.D. Cal. 2015), cited in Defendants' opposition, an expert "[a]rguing  
 10 claim construction to the jury is inappropriate because it risks confusion and the likelihood that a  
 11 jury will render a verdict not supported by substantial evidence." *Id.* at \*5-6 (quoting *MediaTek Inc.*  
 12 *v. Freescale Semiconductor, Inc.*, No. 11-CV-05341-YGR, 2014 WL 971765, at \*4 (N.D. Cal. Mar.  
 13 5, 2014); *see also* *Huawei Techs., Co v. Samsung Elecs. Co*, 340 F. Supp. 3d 934, 949 (N.D. Cal.  
 14 2018) (expert witnesses are not permitted to argue claim construction to a jury); *Icon-IP Pty Ltd. v.*  
 15 *Specialized Bicycle Components, Inc.*, 87 F. Supp. 3d 928, 945 (N.D. Cal. 2015) (similar  
 16 (summarizing *MediaTek*)). Expert opinions should be excluded when they "'exceed the bounds' of  
 17 the plain and ordinary meaning of the claim terms" and "delv[e] too deeply into claim construction  
 18 to be presented to the jury[.]" *Huawei Techs.*, 340 F. Supp. 3d at 967 (citing *Apple Inc. v. Samsung*  
 19 *Elecs. Co.*, No. 11-cv-01846-PSG, 2014 WL 660857, at \*6 (N.D. Cal. Feb. 20, 2014) and *Fujifilm*,  
 20 2015 WL 1265009, at \*6). Similarly, an expert opinion should be stricken when it "'extend[s] too far  
 21 into the territory of claim construction' to be presented to the jury." *Fujifilm*, 2015 WL 1265009, at  
 22 \*6 (citing *MediaTek Inc.*, 2014 WL 971765, at \*6).

23      In the *MediaTek* decision quoted in *FujiFilm*, Judge Gonzalez Rogers granted a motion to  
 24 preclude the defendant's expert from arguing thinly veiled claim construction positions to the jury  
 25 like those offered by Dr. Abraham here. Judge Gonzalez Rogers found it was a "pretense" that the  
 26 expert would supposedly be testifying only about the "understanding that someone of ordinary skill  
 27 in the art would have as to ... certain terms that were never previously identified for claim  
 28 construction." *Id.* at \*2, \*4 Because the proposed expert testimony "relie[d] heavily on the

1 prosecution history, specifications, and even provisional applications to explain and expound upon a  
 2 specific meaning and/or requirements of the terms identified,” and “a fair reading of the expert  
 3 report reveals an intention to argue claim construction” to the jury, she ruled that the expert’s  
 4 testimony “extend[ed] too far into the territory of claim construction” to be presented to the jury. *Id.*  
 5 at \*5–6 (also noting that extrinsic evidence “is not appropriate for presentation to a jury [by an  
 6 expert] and is properly excluded at trial”). Accordingly, she granted the plaintiff’s motion to  
 7 preclude the expert from explaining the meaning of the terms to the jury under the alleged guise of  
 8 plain and ordinary meaning. *Id.* at \*7.

9 As in *MediaTek*, Dr. Abraham’s opinion on what “a single receptacle that is divided into two  
 10 chambers” “actually means” (Dkt. 400-5, ¶¶53-55) is improper because it “exceeds the bounds” of  
 11 the parties’ stipulation and delves too deeply into extrinsic evidence and claim construction to be  
 12 presented to a jury. *Huawei Techs.*, 340 F. Supp. 3d at 967). **And worse, Dr. Abraham adds multiple  
 13 limitations to the parties’ stipulated construction of “reservoir” (“single receptacle defining a  
 14 fluid flow path”), and also adds multiple limitations to the parties’ stipulation that the claimed  
 15 “reservoir” is a “single receptacle that is divided into two chambers,” based on his personal spin  
 16 on extrinsic evidence.** This extrinsic evidence includes the structure of a Cooler Master Seidon  
 17 120V product not at issue in this action, Asetek’s and its expert’s arguments in the CMI USA trial  
 18 and the jury verdict, and the prior art Ryu reference. Dkt. 400-5 ¶¶53-55. The new limitations he  
 19 seeks to add to the stipulated “a single receptacle that is divided into two chambers” include:

- 20 • “the same single-receptacle component” must “contain[] within it two chambers on its top  
 21 and bottom, respectively” (Dkt. 400-5, ¶54)
- 22 • “the structure separating the two chambers is within the same single receptacle and divides  
 23 such single receptacle from within and into the two chambers within it. The two chambers  
 24 do not have their own separate and separable [sic] enclosures, and they depend on the single  
 25 receptacle to enclose them. This is in sharp contrast to the prior art (such as Ryu) and  
 26 CoolIT’s new design (*see* figure below), of which the upper/pump chamber and the  
 27 lower/thermal exchange chamber are separate and separable and have their own separate  
 28 and separable boundary walls” (Dkt. 400-5, ¶55)

1       None of the above limitations were even discussed (Dkt 400-2, ¶8), much less included in the  
 2 parties' stipulation that the claimed "reservoir" is "a single receptacle that is divided into two  
 3 chambers." Nor did any of Asetek's experts (Drs. Tilton or Tuckerman) ever agree with them. Under  
 4 the *MediaTek*, *FujiFilm*, *Huawei* decisions from this district, Dr. Abraham should not be permitted to  
 5 add these new limitations to the parties' stipulated construction and present them to the jury. As in  
 6 *MediaTek*, "a fair reading of the expert report reveals an intention to argue claim construction" to the  
 7 jury (*MediaTek*, 2014 WL 971765, at \*5), and Dr. Abraham should be precluded from doing that.<sup>1</sup>

8       Moreover, the opinions by Dr. Abraham where he delves into extrinsic evidence to narrow the  
 9 parties' stipulated construction of "reservoir" are also unreliable and should thus be excluded under  
 10 the *Daubert* standard. *EMC Corp. v. Pure Storage, Inc.*, 154 F. Supp. 3d 81, 109 (D. Del. 2016).  
 11 Arguing claim construction to the jury also usurps the role of the court and increases the risk of jury  
 12 confusion, and should not be allowed. *Apple, Inc. v. Samsung Elecs. Co.*, No. 12-CV-00630-LHK,  
 13 2014 WL 660857, at \*3 (N.D. Cal. Feb. 20, 2014) ("Arguing claim construction to the jury is  
 14 inappropriate because it risks confusion and the likelihood that a jury will render a verdict not  
 15 supported by substantial evidence.").

16 **III. Defendants' Opposition Mischaracterizes the Structure of the Lower Chamber  
 17 in the H100i and the Experts' Reports/Opinions Regarding Same**

18       In their opposition, Defendants argue that the cold plate in the accused H100i device is the  
 19 only portion of the lower chamber that contains volume/fluid and that performs the thermal  
 20 exchange function of the lower chamber. That is incorrect, as explained below. And from that  
 21 incorrect premise, Defendants erroneously contend that "a key factual point Dr. Abraham makes  
 22 here is that Asetek's infringement theory [for the accused H100i] requires the copper device's  
 23 volume that can receive and contain liquid to satisfy the 'lower chamber *providing the thermal*

24  
 25  
 26       <sup>1</sup> Defendants' citation to *Arctic Cat Inc. v. Bombardier Prods., Inc.*, No. 14-cv-62369, 2016  
 27 WL 9402395, \*7 (S.D. Fla. 2016), vacated in part, 876 F.3d 1350 (Fed. Cir. 2017), related appeal  
 28 876 F.3d 1350 Fed. Cir. 2017), does not change the analysis. For the reasons explained in Asetek's  
 motion and herein, Dr. Abraham's opinion should be precluded because it is not "reliable and  
 helpful," unlike the expert opinion that was not excluded in *Arctic Cat*. Allowing Dr. Abraham to  
 argue claim construction to the jury will only confuse them, as explained in the *MediaTek* and  
*FujiFilm* decisions discussed above.

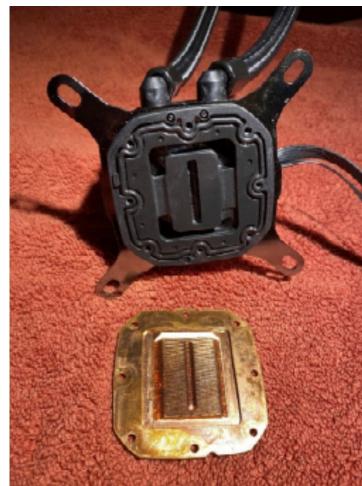
1 *exchange function.”* Dkt. 420 at 6. But Dr. Abraham never made any such statement in his report or  
 2 otherwise; instead, this is new and unsupported attorney argument in Defendants’ opposition that  
 3 Defendants attempt to dress up as their expert’s opinion, but which is not there. *Id.*<sup>2</sup> Tellingly,  
 4 Defendants’ opposition does not cite to Dr. Abraham’s report or anything else he said for this  
 5 alleged “key factual point” he supposedly made. Instead, they cite to attorney argument in a previous  
 6 filing, but even that makes a different point than the argument(s) in Defendant’s opposition. Dkt. 420  
 7 at 6. (citing Dkt. 342 at 2 of 48).<sup>3</sup>

8 Moreover, Defendant’s argument that Asetek supposedly “requires” the H100i cold plate to  
 9 contain fluid or volume for Asetek’s infringement position is incorrect. This argument is based on  
 10 Defendants’ misrepresentations in their opposition that “there is virtually no space *within* the [lower  
 11 chamber of the H100i] for Asetek to map the to the ‘lower chamber/compartment’ to provide the  
 12 required thermal exchange function under the parties’ stipulation.” Dkt. 420 at 6 (underline and bold  
 13 type added). This assertion misrepresents the structure of the H100i, in which the volume of the  
 14 lower chamber/compartment extends above the cold plate and includes the plastic cavity(ies) in the  
 15 housing above the cold plate, which are part of the lower chamber. This assertion also misrepresents  
 16 what Dr. Abraham and Dr. Tuckerman said about the lower chamber of the H100i; both of their  
 17 reports state there is volume above the cold plate. And this assertion is also inconsistent with  
 18 Defendants’ assertion that the lower chamber in the H100i allegedly has two receptacles (explained  
 19 below).

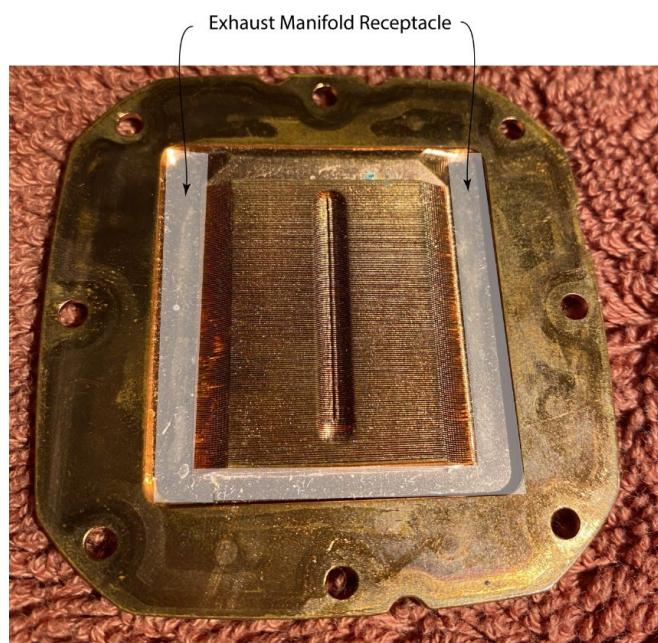
20  
 21  
 22 <sup>2</sup> Defendants’ opposition repeats the same sort of misrepresentation many times, claiming  
 23 that Dr. Abraham supposedly “explained” various things that he never mentioned, followed by no  
 24 cites to Dr. Abraham. *See, e.g.*, Dkt. 420 at 1-3.

25 <sup>3</sup> Later their brief, Defendants similarly but incorrectly argue that “Asetek *needs* the volume  
 26 in the ‘second separable receptacle,’ *i.e.*, the copper [cold plate] device, to map to the ‘lower  
 27 chamber/compartment to provide the required thermal exchange function . . . .” Dkt. 420 at 6-7.  
 28 Although they cite to two paragraphs in Dr. Abraham’s report for this argument, his report does not  
 say that. *Id.* at 7 (citing Dkt. 400-5 at ¶¶85-86). The cited paragraphs of the Abraham report say only  
 that the cold plate supposedly has a receptacle; they do not state or support the assertions in  
 Defendants’ opposition that there is virtually no volume in the top plastic half of the lower chamber,  
 that the top plastic half of the lower chamber does not contribute to the “required thermal exchange  
 function,” or that Asetek’s infringement positions requires or needs the cold plate to contain volume  
 to perform the thermal exchange function. All of these are new attorney arguments, not opinions in  
 Dr. Abraham’s report.

1 To begin with, Defendants' use of the word "virtually" in their assertion that there is  
 2 "virtually no volume" in the H100i lower chamber other than in copper cold plate is a tacit  
 3 admission that there *is* volume in the lower chamber in addition to any volume in the cold plate.  
 4 Furthermore, the photos Defendants include in their opposition to support their incorrect assertion  
 5 actually show the opposite, i.e., grooves and spaces in the plastic portion of the lower chamber that  
 6 have volume and contain fluid:



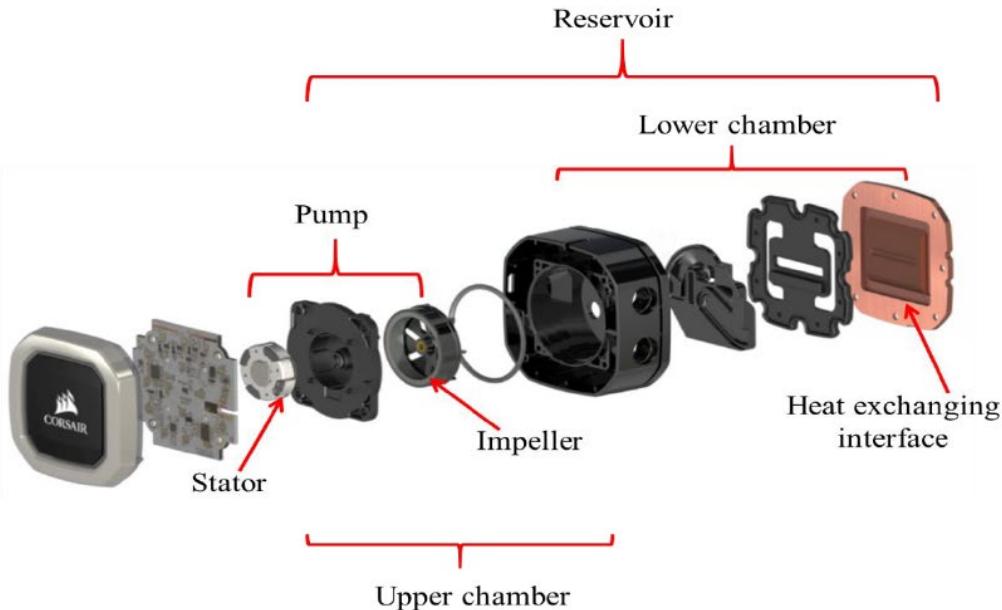
17 Dkt. 420 at 6. The above photo (from Defendant's opposition) shows a disassembled H100i,  
 18 showing the copper cold plate removed and sitting separately from the upper portion of the lower  
 19 chamber (i.e., the black plastic housing portion that includes a groove and recesses that line up with  
 20 the structure of the cold plate). In the photo, the product has been opened like a clamshell, revealing  
 21 the two interior sides of the lower chamber, the bottom portion (the copper cold plate) and the top  
 22 portion (the black plastic portion). When the unit is assembled, those two sides are brought and  
 23 screwed together, and together they form the interior of the lower chamber of the reservoir. As  
 24 mentioned, the black plastic housing portion of the lower chamber (shown above) includes grooves  
 25 and other recesses similar in depth and character to the exhaust manifold groove in the copper cold  
 26 plate that Dr. Abraham argues holds volume/fluid and is itself a "receptacle" in his report and  
 27 annotation below:



Dkt. 420 at 4. Thus, Defendants' argument in their opposition that there is "virtually no space" within the upper, plastic portion of the lower chamber is incorrect and disproved by their own photos, in addition to not being included in their expert's opinion.

And moreover, both Dr. Abraham and Asetek's expert, Dr. Tuckerman, made statements in their respective reports from which it is clear that the volume in the lower chamber in the H100i is not just volume in the copper cold plate, but also includes the volume in the plastic housing structure above the cold plate. Dkt. 400-5 ¶92 (referring to the copper cold plate/"heat exchanging interface" as only "part of the lower chamber"; "That is, even after the removal of the copper component, the heat exchanging interface is still attached to the single-receptacle 'reservoir' containing within it the lower chamber. In other words, there is no way to remove just the 'heat exchanging interface' without also removing part of the 'lower chamber' from the 'reservoir.'"); Dkt 386-5 ¶58 ("Each of the upper chamber and the lower chamber [in the H100i] is surrounded by boundary walls, as shown above, and each contains fluid."), ¶275, ¶282.

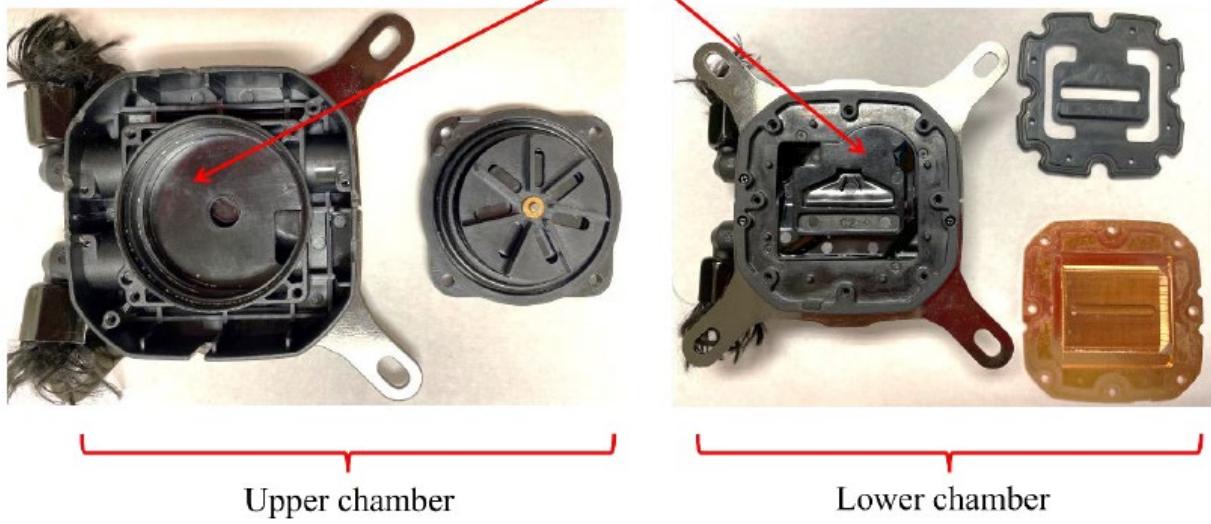
1 Dr. Tuckerman similarly testified that the “lower chamber” is not just the copper cold plate,  
 2 but includes the pieces and the volume in the housing structure above the cold plate, as illustrated  
 3 below:



14 **Exploded View of the Pump Unit**

15 (Source: <https://www.corsair.com/us/en/Categories/Products/Liquid-Cooling/Dual-Radiator-Liquid-Coolers/Hydro-Series%E2%84%A2-RGB-Platinum/p/CW-9060039-WW>)

16  
 17 *Id.* at ¶275. The “lower chamber” extends from the “horizontal wall” (at the top of the lower  
 18 chamber) to the copper cold plate. *Id.* at ¶280; *also see* image below. And contrary to Defendants’  
 19 assertion, the copper cold plate (i.e., the “heat exchanging interface”) is part of and included by the  
 20 “reservoir” as expressly required by claims 17 and 19 of the ’362 patent (“separably thermally  
 21 coupling *a heat exchanging interface of a reservoir.*”). Dkt. 228-5.



Dkt. 386-5, ¶278-79.

**IV. Defendant's Interpretation of "Reservoir," and Their Argument That the H100i Avoids Infringement Because the Cold Plate Allegedly Contains A "Receptacle," Would Exclude Asetek's Preferred Embodiments**

Defendants argue in their opposition that Asetek's "interpretation" of Dr. Abraham's noninfringement opinion is supposedly wrong, and from that they attempt to brush aside various challenges to their noninfringement positions. Asetek did not misinterpret Dr. Abraham's report; Defendants' brief repeatedly attempts to recast Dr. Abraham's opinions with unsupported attorney argument claiming that Dr. Abraham explained or made key points that he did not make and that are not supported by cites to his report. E.g., Dkt. 420 at 1-3. With respect to Asetek's point that Dr. Abraham's application of "receptacle" in his noninfringement opinion would exclude Asetek's preferred embodiments and is thus improper, Asetek did not misinterpret Dr. Abraham's noninfringement opinion for the H100i. Dr. Abraham's noninfringement expert report states that the manifold groove in the copper cold plate in the H100i (see his annotated photo below) is "capable of holding coolant (with proper orientation)" and is thus a receptacle (Dkt. 400-5, ¶¶85-87):



*Id.* And based on that opinion, Dr. Abraham opined that the H100i does not infringe the '362 patent claims because the lower chamber, which includes the cold plate, allegedly "has two receptacles," rather than a single receptacle:

[I]t is my opinion that Dr. Tuckerman is incorrect, and that what he has identified as a "lower/thermal exchange chamber" actually consists of multiple receptacles. . . . **Because what Dr. Tuckerman points to as the lower/thermal exchange chamber actual [sic] has two receptacles, the accused product does not infringe.**

Dkt. 400-5, ¶87 (emphasis added). Defendants' opposition, is frankly, confusing and hard to follow, but they now appear to argue that Dr. Abraham's opinion is not that the H100i avoids infringement because the unit as a whole contains two receptacles, but instead that H100i avoids infringement because part of the lower chamber (the cold plate) is separable, and because the lower chamber allegedly contains two receptacles. *See* Dkt. 420 at 2. But even accepting that revision or clarification from Defendants, Dr. Abraham's application of "receptacle" would still exclude Asetek's preferred embodiments, and thus should be excluded as unreliable under *Daubert*. To focus on a single example, the bowl-shaped impeller cover 46A in Figures 17 and 20 in the '196 patent

1 defines pump chamber 46, is separable from the reservoir housing 14, and is capable of holding or  
 2 accommodating coolant:

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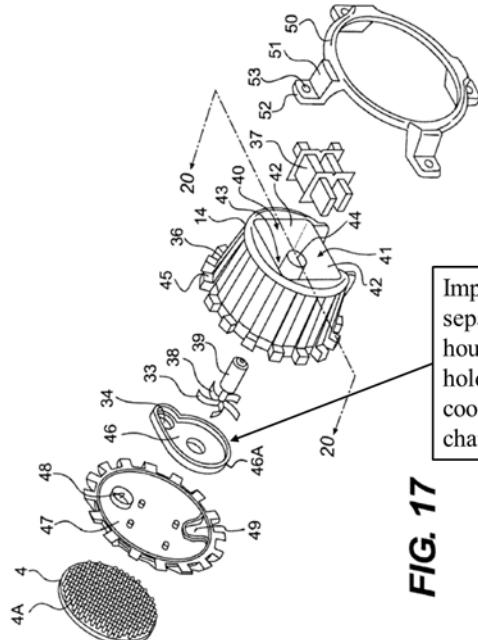


FIG. 17

Impeller cover 46A is separable from reservoir housing 14, is capable of holding or accommodating coolant, and defines pump chamber 46

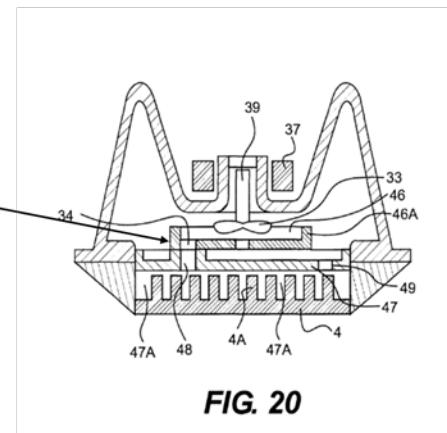


FIG. 20

16 Dkt. 400-4 Figs. 17 and 20 (annotations added). Defendants' argument that Figures 17 and 20 from  
 17 the '196 patent are irrelevant because that patent is currently stayed ignores that the parties agreed  
 18 that their stipulated construction of "reservoir" applied equally to all of the patents asserted by  
 19 Asetek, including the '362, '196, and '601 patents. Dkt. 237 at 2; Dkt. 67 at 1.

## V. Judge Tigar's Nesting Doll Analogy Is Spot On

21 Defendants' argument that Judge Tigar's nesting doll analogy is irrelevant is erroneous.  
 22 Defendants' argument is premised on their assertion that the cold plate in the H100i is not part of the  
 23 recited reservoir, or is outside the reservoir (which, like most of Defendants' other arguments is not  
 24 supported by any citation to Dr. Abraham or his report). Dkt. 420 at 16. But that premise/argument is  
 25 incorrect. Claims 17 and 19 clearly recite that the "heat exchanging interface" (the cold plate) is both  
 26 part of the recited reservoir, and is removable from the reservoir. The first element of claim 17  
 27 recites "thermally coupling a heat exchanging interface of a reservoir . . . the heat exchanging  
 28 interface being removably coupled to the reservoir . . ." Dkt. 228-5 claim 1, 20:31-44. Claim 19

1 depends from 17 and recites the same limitations. Id. claim 19. Thus, the claims themselves establish  
 2 that the “heat exchanging interface” (cold plate) is part of the reservoir and is removable from the  
 3 reservoir, and Figure 15 shows that the heat exchanging interface 4 forms the base of the lower  
 4 chamber (which is placed thermal contact with the CPU). *Id.* Fig. 15. The same is true of the cold  
 5 plate in the H100i: it is also part of and removable from the reservoir. Dkt. 386-5, ¶275 (showing the  
 6 cold plate is removable and still part of the “reservoir”). Thus, Judge Tigar’s nesting doll analogy  
 7 remains compelling and illustrates the fallacy of Dr. Abraham’s noninfringement argument. This is  
 8 yet another reason why Dr. Abraham’s infringement theory/opinion should be precluded as  
 9 unreliable under *Daubert*.

10 **VI. Dr. Abraham’s Distorted Reinterpretation of “Reservoir” Contradicts CoolIT’s  
 11 Arguments at the PTAB**

12 Defendants’ argument that their expert is not contradicting CoolIT’s representations to the  
 13 PTAB boils down to a bald assertion that he supposedly said nothing contradictory (he did) and that  
 14 Asetek is supposedly taking CoolIT’s IPR statements out of context (Asetek did not). Asetek’s  
 15 position is that there are multiple receptacles (within the alleged “single receptacle” of Duan) that  
 16 are defined by the multiple components connected or integrated to form the alleged “reservoir” in  
 17 Duan. Defendants have never disputed that position with any expert testimony, and in their  
 18 opposition, they try to avoid their inconsistent positions by drawing a thick red outline around  
 19 Duan’s separate accommodation chamber 21 and cap 4 components to argue that these separate  
 20 components are parts of a “single receptacle.” Dkt. 420 at 17. But this unsupported attorney  
 21 argument does not dispel Asetek’s point that Dr. Abraham’s noninfringement position should be  
 22 precluded under *Daubert* because it is inconsistent with CoolIT’s allegations in the IPR that the  
 23 separate accommodation chamber and cap define separate receptacles in Duan.

24 **VII. Conclusion**

25 Paragraphs 53-55 and 85-89 of Dr. Abraham’s noninfringement opinion improperly delve too  
 26 far into claim construction territory and should be excluded under precedent from this district and  
 27 *Daubert*.

28

1 Dated: April 21, 2022

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